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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 40

UNITED STATES OF AMERICA, APPELLANT

v.

ROSCOE DENMARK

No. 41

UNITED STATES OF AMERICA, APPELLANT

v.

MILTON M. BRAUN

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court and the amendment thereto in No. 40 (*Denmark* R. 5-8), and the opinion in No. 41 (*Braun* R. 4-5), are not reported.

JURISDICTION

The order of the District Court dismissing the indictment in No. 40 was entered on February 25, 1953 (R. 5-7), and in No. 41, on February 26, 1953 (R. 4-5). An amendment to the order in No. 40 was entered on March 26, 1953 (R. 7-8). Notices of appeal in both cases were filed on March 26, 1953 (*Denmark* R. 8; *Braun* R. 6). On May 18, 1953, this Court noted probable jurisdiction in both cases and consolidated them for argument (*Denmark* R. 10; *Braun* R. 7). The jurisdiction of the Supreme Court to review on direct appeal the orders of the District Court dismissing the indictment in each case, based on a construction and the unconstitutionality of the statute upon which the indictment is founded, is conferred by 18 U.S.C. 3731. See also Rules 37(a)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether, in aid of its power to prohibit the shipping of gambling machines in interstate commerce, Congress may require dealers in such machines to register with the Attorney General and report all sales, including intrastate deliveries.

2. Whether the requirement that the dealer register with the Attorney General the addresses of his places of business "in such district" renders the statute void for vagueness.

STATUTE AND REGULATION INVOLVED

The statute and regulation involved are set forth as Appendix A (*infra*, pp. 27-30) and Appendix B (*infra* p. 33), respectively.

STATEMENT

No. 40.

On May 13, 1952, an indictment in four counts charging violations of Section 3 of the Act of January 2, 1951 (pp. 28-29, *infra*) was returned against appellee Denmark in the United States District Court for the Southern District of Georgia (*Denmark* R. 1-2).

Count One of the indictment charges appellee with engaging in the business of a dealer in gambling devices without having registered with the Attorney General his name, trade name, and addresses of his places of business. The other three counts charge appellee, a dealer in gambling devices, with having failed to file reports of certain sales and deliveries of gambling devices as required by statute.

Appellee's motion to dismiss the indictment (*Denmark* R. 3-4) was granted. In its opinion as amended (*Denmark* R. 5-8), the District Court indicated as the basis of its order the fact that Section 3 of the Act of January 2, 1951 is constitutionally applicable only to "interstate sales." As there was no allegation that the transactions alleged in counts 2, 3, and 4 were "interstate sales," and the government attorney conceded they were not, the indictment was held fatally defective.[1]

[1] The trial court at first erroneously stated in its opinion and order dismissing the indictment (*Denmark* R. 6) that "* * * it is conceded that none of the machines allegedly sold by the defendant were ever transported in interstate commerce and that all of his alleged transactions were had wholly within the State of Georgia." On application by the Government, and

The District Court also held that the requirement in Section 3, that a dealer register with the Attorney General his place of business "in such district" rendered the statute "too vague, indefinite, and uncertain in failing to definitely and clearly designate what is meant by the language 'In such district.'"

No. 41

On May 13, 1952, in the United States District Court for the Southern District of Georgia, a five-count indictment was returned against the appellee Braun (*Braun* R. 1-2), the first count of which charged him with engaging in the business of a dealer in gambling devices without having registered with the Attorney General of the United States his name, trade name, and address of his place of business. The remaining four counts charged him with having failed to file with the Attorney General an inventory and record of various sales and deliveries of gambling devices, all as required by Section 3 of the Act of January 2, 1951 (*infra*, pp. 28-29).

Appellee filed a motion to dismiss the indictment (*Braun* R. 3) which was granted. In its opinion

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with consent of defense counsel, this part of the opinion was corrected and amended to read (*Denmark* R. 8): "No allegation is made in the indictment as to any of the sales being interstate commerce, and the Assistant District Attorney conceded that there were no interstate sales."

The Government submits that the concession in this case and in the companion *Braun* case, was intended to mean only that none of the sales alleged in the reporting counts of the indictments were sales directly across a state line. The concession was not intended to mean that the machines had not been or would not be transported in interstate commerce.

dismissing the indictment (*Brown* R. 4-5), the District Court noted that "No allegation is made in the indictment as to any of the sales being interstate commerce, and the Assistant District Attorney conceded that there were no interstate sales." The court held, as it had previously in the companion *Denmark* case, that "Section 1173 has no application to the defendant in this case, since the Statute under consideration does not apply to intrastate transactions which do not directly affect interstate commerce," and further that "the statute involved, in so far as it undertakes to regulate purely intra-state transactions which do not directly affect interstate commerce, goes beyond the power of Congress under the Commerce Clause of the Constitution."

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that Congress cannot, in aid of its power to prohibit the shipping of gambling machines in interstate commerce, require dealers in such machines to register with the Attorney General and report all sales, including intrastate deliveries, pursuant to Section 3, Act of January 2, 1951, 64 Stat. 1135, 15 U.S.C. (Supp. V) 1173.

2. In holding that the requirement that the dealer register with the Attorney General the addresses of his places of business "in such district" renders the statute void for vagueness.

3. In dismissing the indictments in each case.

SUMMARY OF ARGUMENT

I

Many decisions establish that Congress may choose any reasonable means for carrying into execution the powers vested in it, and that pursuant to this principle, Congress may reach intrastate activities when necessary to the effective enforcement of a regulation of interstate commerce. It is also well established that this power is not limited to persons who are themselves in some way engaged in such commerce. *E.g., United States* v. *Wrightwood Dairy Co.*, 315 U.S. 110, 121; *United States* v. *Sullivan*, 332 U.S. 689; *Wickard* v. *Filburn*, 317 U.S. 111.

Here Congress is not regulating any intrastate activities; it is only requiring the furnishing of information needed in order that slot machines unlawfully transported in interstate commerce may be identified. In a business which Congress found to be closely enmeshed with nation-wide crime syndicates, concealment of prohibited interstate shipments through straw transactions and intermediaries is to be anticipated. A system of reports which will enable the Government to follow a slot machine as it moves from hand to hand before and after, as well as during interstate transportation, is certainly a reasonable and probably an essential means of determining both the identity of the illegal transporter and the whereabouts of the machine which has been so transported. Other informational requirements as to intrastate activi-

ties have uniformly been sustained. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U.S. 194, 215; *United States* v. *Darby*, 312 U.S. 100, 124; *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 214. These authorities and principles are plainly sufficient to demonstrate the constitutionality of Section 3 of the slot machine statute as applied to intrastate dealers.

II

The statute is not indefinite and uncertain in failing to define the districts with respect to which the manufacturers and dealers must file reports. The Attorney General has by appropriately published regulation defined such district so that no person subject to the Act would be in any doubt as to where he should file reports or as to the places to be reported. The statute should be given a sensible meaning which will carry out the congressional purpose so long as no trap for the unwary is created.

ARGUMENT

I

The Informational Requirements of the Act Forbidding the Interstate Transportation of Slot Machines Are Constitutional Even as Applied to Intrastate Transactions.

Section 2 of the Act of January 2, 1951, 64 Stat. 1134, 15 U.S.C. (Supp. V) 1172, prohibits the transportation of gambling devices, *i.e.*, slot machines, in interstate commerce, except to states or portions of states which by state law are ex-

empted from the prohibition. Section 3 (15 U.S.C. (Supp. V) 1173) requires every manufacturer of and dealer in such devices annually to register with the Attorney General his name and the addresses of his places of business, and monthly to file with the Attorney General an inventory and a record identifying by mark and by number each device sold and delivered during the preceding month, together with the names and addresses of the buyers or consignees and of the carriers.[2] These reporting provisions are not limited to persons or transactions in interstate commerce, although their obvious purpose is to obtain the information needed in order to enforce the prohibitions on interstate shipments contained in Section 2. The district court, though recognizing the power of Congress to forbid the interstate transportation of gambling devices, has held that Section 3 constitutes a regulation of purely intrastate transactions not directly affecting interstate commerce, and that insofar as the statute was so applied it went beyond the commerce power of Congress.

This decision overlooks the fact that Section 3 requires merely the furnishing of information, and that such information can reasonably be sought in order to facilitate, or indeed permit, the enforcement of the interstate prohibition contained in Section 2. The decision is thus in conflict with principles frequently recognized and applied by this Court.

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[2] Violations of the Act, including Section 3, are punished by fine and imprisonment. Section 6, 15 U.S.C. (Supp. V) 1176.

A. THE COMMERCE POWER PERMITS CONGRESS TO CHOOSE MEANS REASONABLY ADAPTED TO INSURING THE ENFORCEMENT OF THE PROHIBITION ON THE INTERSTATE TRANSPORTATION OF SLOT MACHINES, AND THIS INCLUDES REGULATIONS AFFECTING INTRASTATE ACTIVITIES TO WHATEVER EXTENT IS NECESSARY.

The Constitution not only empowers Congress "To regulate Commerce * * * among the several States" (Art. I, Sec. 8, Cl. 3) but also "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Power" (Art. I, Sec. 8, Cl. 17). It has been axiomatic since *McCulloch* v. *Maryland*, 4 Wheat. 316, 421, that the "sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people."

Many decisions of this Court have established that this principle applies to the power of Congress to reach intrastate activities as a means of effectuating a regulation of interstate commerce. This Court has thrice stated in recent years, in identical terms, that the commerce power "extends to those activities intrastate which so affect interstate commerce *or the exercise of the power of Congress over it* as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce." (Italics supplied.) *United States* v. *Darby*, 312 U.S. 100, 118; *United States* v. *Wrightwood Dairy Co.*, 315 U.S. 110, 119; *Wickard* v. *Filburn*, 317 U.S. 111, 124.

And in the *Darby* case the Court declared that "Congress, having by the present Act adopted the policy of excluding from interstate commerce [goods produced without conforming to the specified labor standards, for which we can substitute "gambling devices"], it may choose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities. Such legislation has often been sustained with respect to powers, other than the commerce power granted to the national government, when the means chosen, although not themselves within the granted power, were nevertheless deemed appropriate aids to the accomplishment of some purpose within an admitted power of the national government." 312 U.S. at 121. In support of this proposition, the Court referred to the familiar cases holding "that the power to prohibit traffic in intoxicating liquors includes, as an appropriate means of making that prohibition effective, power to prohibit traffic in similar liquors, although non-intoxicating" (*Everard's Breweries* v. *Day*, 265 U.S. 545, 560; *Purity Extract Co.* v. *Lynch*, 226 U.S. 192; *Jacob Ruppert* v. *Caffey*, 251 U.S. 264) as well as to *Westfall* v. *United States*, 274 U.S. 256, 259, in which the Court states that "when it is necessary in order to prevent an evil to make the law embrace more than the precise thing to be prevented it may do so."

In the *Darby* case itself this principle was applied to sustain the prohibition of substandard labor conditions in the production of goods some

of which were destined for interstate commerce, on the ground that such a prohibition, applicable to intrastate transactions, was an effective means of enforcing the prohibition against the interstate transportation of such goods. 312 U.S. at 121-122. We shall show at Point B, *infra*, pp. 14-23, that requiring reports which will permit identification of slot machines whenever they are sold, and of their buyers, will clearly be an effective means of enforcing the prohibition against their interstate transportation.

Other illustrations of the same principle are the familiar commingling cases, in which a federal statute is applied to intrastate as well as interstate acts because enforcement would be impossible if they were required to be separated. *E.g., Currin* v. *Wallace*, 306 U.S. 1; *Mulford* v. *Smith*, 307 U.S. 38. And *United States* v. *Walsh*, 331 U.S. 432 (guaranty that drugs are not misbranded), and *United States* v. *Sullivan*, 332 U.S. 689 (sale of misbranded drugs at retail after interstate shipment to wholesaler) are other recent examples of the regulation of intrastate activities in order to make possible effective enforcement of the regulation of interstate commerce.

These cases and others also show that this principle permits the regulation of an intrastate business even though the person regulated is not himself in interstate commerce at all. Such was the situation in the *Walsh*, *Sullivan* and *Wrightwood* cases, as well as in *Wickard* v. *Filburn* (wheat farmer consuming wheat on his own farm).

In the *Wrightwood* case the Court said on that very point (315 U.S. at 121):

> It is no answer to suggest, as does respondent, that the federal power to regulate intrastate transactions is limited to those who are engaged also in interstate commerce. The injury, and hence the power, does not depend upon the fortuitous circumstance that the particular person conducting the intrastate activities is, or is not, also engaged in interstate commerce. See *Chicago Board of Trade* v. *Olsen*, 262 U.S. 1; *Stevens Co.* v. *Foster & Kleiser Co., supra.* It is the effect upon interstate commerce or *upon the exercise of the power to regulate it*, not the source of the injury which is the criterion of Congressional power. [Italics supplied.]

The authorities referred to, and the principle of constitutional law for which they stand make it plain that Congress can impose affirmative regulation upon persons not engaged in interstate commerce when reasonably appropriate to the effective regulation of such commerce. In the statute now before the Court, Congress has not gone that far. It has not affirmatively regulated the business of intrastate dealers in slot machines. It has merely required them to furnish information, information which is necessary if the prohibition against interstate transportation is to be made effective.

Many cases establish that Congress may require persons to furnish information as to intrastate activities as a means of implementing and enforcing

a statute relating to interstate commerce. Thus in *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U.S. 194, the Court sustained the authority of the Interstate Commerce Commission to require financial reports as to all the intrastate activities of carriers, even including the operation of amusement parks (pp. 215-216). As to this the Court said that "if the Commission is to be informed of the business of the corporation, so far as its bookkeeping and reports are concerned, it must have full knowledge and full disclosures thereof, in order that it may ascertain whether forbidden practices and discriminations are concealed, even unintentionally." The same is true here if the slot machine business is viewed as a whole, as it properly may be by Congress.

In the *Goodrich* case, the Court distinguished between regulation and the furnishing of information, stating that "the requiring of information concerning a business is not regulation of that business." (224 U.S. at 211). The opinion rests on the premise that Congress can seek information as to matters beyond its regulatory power. And *United States* v. *Darby, supra,* disposed summarily of an objection to a record-keeping requirement "incidental" (312 U.S. at 124) to the enforcement of the substantive statutory provision, saying merely that (312 U.S. at 125):

> The requirement for records even of the intrastate transaction is an appropriate means to the legitimate end. See *Baltimore & Ohio R. Co.* v. *Interstate Commerce Comm'n*, 221 U.S.

612; *Interstate Commerce Comm'n* v. *Goodrich Transit Co.*, 224 U.S. 194; *Chicago Board of Trade* v. *Olsen*, 262 U.S. 1, 42.

That information as to intrastate matters may be obtained in enforcing a regulation of interstate commerce also appears from *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, which upheld the power of the Wage and Hour Administrator to subpoena records of employers without first proving that they were covered by the Fair Labor Standards Act. The power to obtain such information, which might in the particular case relate only to intrastate transactions, was necessary to the determination of what acts were not interstate commerce. The authority of Congress to do this, the Court stated, "would seem clearly to be comprehended in the 'necessary and proper' clause, as incidental to both its [Congress'] general legislative and its investigative powers." 327 U.S. at 214. The informational requirements of the slot machine statute have the same purpose—identification of the persons who transport slot machines in interstate commerce and of the machines themselves.

B. THE INFORMATIONAL REQUIREMENTS ARE REASONABLE MEANS OF ENFORCING THE PROHIBITION AGAINST INTERSTATE TRANSPORTATION OF SLOT MACHINES.

Perhaps the most familiar means of implementing regulatory statutes to facilitate their enforcement is by requiring that records be kept or that information be filed with the Government. Such requirements have often been held to be reasonable

and appropriate, and therefore constitutional, means of carrying out substantive powers. See the *Darby* and *Goodrich Transit* cases discussed above and *Baltimore & Ohio R. Co.* v. *Interstate Commerce Commission*, 221 U.S. 612; *Chicago Board of Trade* v. *Olsen*, 262 U.S. 1, 42; *United States* v. *Kahriger*, 345 U.S. 22; *Sonzinsky* v. *United States*, 300 U.S. 506; *United States* v. *Doremus*, 249 U.S. 86; *Nigro* v. *United States*, 276 U.S. 332.

The registration and reporting requirements of Section 3 are obviously reasonable means of enforcing the prohibition against the interstate transportation of slot machines, even as applied to dealers who do not themselves sell or transport the machines in interstate commerce. The machines may have been shipped interstate before they reached such a dealer, or they may be so transported after he disposes of them. The statute is enforceable against the person who transports them interstate as well as against the machines themselves. Section 7, 15 U.S.C. (Supp. V) Sec. 1177. If each manufacturer and dealer in the machines reports each transaction of sale, with the identity of the machine, the buyer and the carrier, it will be relatively easy to determine who has transported the machine interstate, and if the machine has been transported into a state where its use is illegal.

A report identifying the machine from a dealer who has received the machine from outside the state, directly or indirectly, can be compared with the report as to the same machine from the state of manufacture and original sale. If all who deal

in the machines without violating the federal statute file reports, the illegal transporter will be easily identified. Thus, if M, the manufacturer, sells to dealer A in the same state who resells to B in the same state, who resells and ships to C in another state, reports by M, A and C will point to B as the illegal transporter, although M, A or C will not have engaged in interstate transportation or perhaps in any interstate commerce at all.

Similarly, even though a dealer such as the defendants in these cases may sell the machines intrastate, the machines eventually may end up across a state line. For example, these defendants, according to the indictment, made unreported sales to buyers in Savannah, Georgia. It would not be difficult for these buyers in turn to resell the machines across the Savannah River into South Carolina. If a machine found in South Carolina, or any other state but Georgia, could be identified as a machine reported as sold by the defendants in Georgia, the Government's records would point to the buyer from the defendants as the illegal interstate transporter, and if this buyer had not himself transported the machines across state lines, his report in turn would identify the next buyer in the chain. Even if the buyer from the defendants filed no report, the enforcing authority would know that he could be questioned as to the identity of the next buyer.

The series of reports from all dealers handling the machines would, if complete, identify the illegal interstate transporter, who presumably would not

himself file reports, as well as the machines illegally transported. And this would be true even though none of those who registered and filed reports were themselves engaged in interstate commerce in violation of the federal law.

Perhaps such an elaborate system of reporting by all dealers would not be necessary if the business were one in which accurate records were invariably kept, and the normal chain from manufacturer to wholesaler to retailer were easily identifiable. But we are not here concerned with an ordinary business. Both the House Committee report on this legislation (H. Rep. 2769, 81st Cong., 2d Sess.) and the report of the Senate Committee to Investigate Organized Crime [3] have emphasized the relation between slot machines and "the existence of Nation-wide crime syndicates which are securing a large share of their revenue from the operation of slot machines and other gambling machines". H. Rep. 2769, *supra*, pp. 4-5. The House Committee stated that (*id.*, pp. 5-6):

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[3] The Third Interim Report of the Special Committee to Investigate Organized Crime in Interstate Commerce of the Senate made the following observation relating to its investigation of Chicago Crime the following year (S. Rep. 307, 82d Cong., 1st Sess., p. 55):

> Most of the coin machines in use throughout the country are manufactured in and around Chicago, and a large number of the machines have been purchased and operated inside the State of Illinois. The manufacture and distribution of slot machines has been a lucrative field of operation for a number of Capone mobsters. The Taylor Manufacturing Co. in Cicero, one of the largest manufacturers of gaming equipment in the country, is partially owned by Claude Maddox, a Capone mobster with a long criminal record, and Joseph Aiuppa, a close friend of Accardo and one of the leading members of the Capone syndicate.

Your committee has favorably reported this bill on the basis primarily of two considerations:

(1) as testified before your committee, Nation-wide syndicates appear to derive substantial revenues from the operation of slot machines and similar gambling devices, and appear to put these revenues into other illegal enterprises with the resulting increase in crimes committed and corruption of public officials, all of which endanger our society; and

(2) slot machines and similar gambling devices appear to offer an opportunity for a particularly vicious form of gambling which "does not give the sucker (many of whom incidentally are juveniles) a decent break."

Representative Preston, who introduced companion bills to S. 3357, which became the Act of January 2, 1951, and who appeared as the first witness in the House hearings, testified that the 10 large concerns which manufacture these devices—including most of the manufacturers of the machines named in these indictments[4]—are all located in Chicago, Illinois, and the machines are distributed from there to places throughout the country (Hearings before the Committee on Interstate and Foreign Commerce, 81st Cong., 2d sess., on S. 3357 and H. R. 6736, pp. 10-12, 23, 28, 29). He also

[4] Compare the indictments (R. 1-2 of each record) with the list of members of the American Coin Machine Manufacturers Association, who produce these devices (Hearings before the Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., on S. 3357 and H.R. 6736, p. 180).

testified that the syndicates which control the industry are centered in Chicago, operate from coast to coast, and according to surveys made by the California Crime Study Commission and the Chicago Crime Commission make a net profit of two or three billion dollars annually, a large part of which is used to pay off public officials, and in other forms of syndicated crime (*ibid.*, pp. 11-12). He stated during House debate that despite the general state policy of prohibiting their use, state enforcement has broken down due to the policies of local bribery and official graft (96 Cong. Rec. 13638). Although slot machines are illegal in 43 states, and their use is limited in the rest except for Nevada (Hearings, pp. 10-11; 96 Cong. Rec. 13638), the president of the manufacturers association, the American Coin Machine Manufacturers Association, testified to the House Committee that his own company, and the other large Chicago manufacturers, have distributors who deal in coin machines in every state in the union without regard to state illegality (Hearings, pp. 182, 185, 191-192). He stated that 75 to 80% of the business of his company, the Lion Manufacturing Corporation, one of the largest of such companies, was interstate. It dealt through 50 wholesale distributors all over the country, who were privileged to sell to anyone whom they wished. Hearings, pp. 181-183. The other manufacturers operated similarly, he stated. Hearings, p. 183.

In a business of this sort, tied in with the underworld, stringent methods of enforcement are obviously reasonable and necessary. Unless all sales

are reported, it would be easy for those who deal in the machines through straw transactions and various intermediate and perhaps fictitious intrastate sales effectively to conceal the identity of the interstate transporter. Without full information as to the movement of the machines, it would also be difficult to tell which transactions contemplated interstate shipments to states or federal reservations where such devices were illegal, and which were intrastate movements or consignments to excepted states such as Nevada.

The criminal syndicates which are engaged in the slot machine business throughout the country can be expected to utilize every possible clandestine device to avoid the breaking of the interstate transmission line upon which their lucrative enterprises depend. Concealment of the actual illegal interstate shipment through the manipulation of labels and bills of lading could reasonably be anticipated.

For these reasons it is obvious that to administer the Act properly the federal government must be informed as to all transactions in order to detect those that are subject to the direct prohibition. It would have to be informed as to each link in the chain that begins with the Illinois manufacturer (who may or may not sell in interstate commerce), passing through various transactions until the devices are finally sold to the ultimate user. The federal government would then have the benefit of the information supplied by manufacturers and dealers regardless of whether they were acting legally or illegally. It could trace and identify (aided by the

identification provisions of Section 4 of the Act, *infra*, p. 29) the total commerce in gambling devices to the end that interstate transactions could be detected.[5] The provisions of Section 3 are thus a necessary and proper adjunct to Section 2 of the Act. They seek to bring to light for purposes of intelligent administration the whole sequence of transactions in order that the prohibited interstate phases may be identified.

If, on the other hand, as the opinions below seem to suggest, Section 3 was held to be applicable only to those who do the very thing that Section 2 of the Act forbids (*i.e.*, transporting gambling devices to states where they are illegal under state law), its effectiveness would be severely diminished. If only sales directly across state lines were required to be reported under Section 3, dealers could sell to ultimate users in the state of manufacture and the Government would be effectively deprived of any trace of the transaction. The only way Section 3 could possibly be interpreted so as to have any force and effect in the administration of the Act as a whole is to require all dealers and manufacturers to report, whether they are directly involved in shipping such devices across state lines or not.[6]

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[5] It is noteworthy that Section 4 of the Act, *infra*, p. 29, which requires all gambling devices and all packages containing them to "be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained * * *" is not restricted in its language to actual interstate shipments.

[6] That Section 3 would all but be rendered nugatory if limited only to violators of Section 2, is emphasized by experience in enforcing the license tax (26 U.S.C. 3267) against owners of

The interstate nature of the traffic in gambling devices justifies the reasonable implementing requirement that all persons engaged in its operation supply information broad enough to enable the federal government to exercise the limited control measures which the Act seeks to promote.

That such a reasonable means of enforcing a regulation of interstate commerce is constitutional, even though it reaches persons not themselves in such commerce, is demonstrated by the authorities discussed in part A, pp. 9-14, *supra*. We add only a specific reference to a case which dealt with a similar problem. In *Kentucky Whip & Collar Co.* v. *Illinois Central Railroad Co.*, 299 U. S. 334, the statute forbade the shipment of prison made goods into states in which the sale of such goods would be illegal. The labeling provision of the statute required labels disclosing the nature of the goods and the names of the shippers and consignees irrespective of whether the shipment was for such a state or to one in which the use of the goods might be liable. The Court stated, in upholding this provision (at p. 353):

> The fact that the labeling was required in all shipments of convict-made goods, regardless of the law of the State of destination, does not invalidate the provision, as its scope could reasonably be deemed to be necessary to accomplish the legitimate purpose of the Act.

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such devices. Although such tax was paid for the year 1949 on 69,000 machines, the House Report on the bill which became the Act of January 2, 1951 (H. Rep. No. 2769, p. 6, *supra*) estimated that there were probably twice that number in operation.

Otis v. *Parker*, 187 U. S. 606, 609; *New York ex rel. Silz* v. *Hesterberg*, 211 U. S. 31, 40; *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 201; *Everard's Breweries* v. *Day*, 265 U. S. 545, 560.

II

The District Court Erred in the Denmark Case in Holding Section 3 of the Act Void for Vagueness

The first and second sentences of Section 3 provide:

> Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every manufacturer of and dealer in gambling devices shall register with the Attorney General his name or trade name, the address of his principal place of business, and the addresses of his places of business in such district. On or before the last day of each month every manufacturer of and dealer in gambling devices shall file with the Attorney General an inventory and record of all sales and deliveries of gambling devices as of the close of the preceding calendar month for the place or places of business in the district.

In No. 40, the District Court held that Section 3 "is too vague, indefinite, and uncertain in failing to definitely and clearly designate what is meant by the language 'In such district,'" in that portion requiring registration with the Attorney General of places of business "in such district" (*Denmark* (R. 7)[1]

[1] The bill as originally introduced in committee (S. 3357, 81st Cong., 2d Sess.) provided in its third section that "• • •

The statute clearly requires that each manufacturer and dealer in gambling devices must register with the Attorney General of the United States his name or trade name, the address of his principal place of business, and the address of any of his other places of business. The reference to the "district" should be given a sensible meaning, which will preserve a workable statute and also be intelligible to the persons regulated. The phrase in question can be given such an interpretation if construed as meaning that for purposes of administering the Act, reporting districts would be established by the Department of Justice. This has been done by Department of Justice Order No. 4173, 16 F.R. 3509, 28 C.F.R. (1952 Supp.) 3 Appendix B, *infra*) promulgated to implement the Act, which creates two reporting districts—one for manufacturers and dealers in gambling devices having places of business in Illinois, the other for those having places of business elsewhere. A person subject to the Act would therefore not be in any

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every manufacturer of and dealer in gambling devices shall register with the collector of internal revenue for each district in which such business is to be carried on, his name or trade name, the address of his principal place of business, and the address of his places of business *in such district*" [italics supplied]. In committee the provision for registration with "the collector of internal revenue for each district" was amended to provide for registration "with the Attorney General", but the phrase "in such district" at the end of the same sentence was not deleted. The Acting Secretary of the Treasury recommended this amendment on the theory that (H. Rep. No. 2769, p. 14, *supra*) "It would seem more desirable that those duties of gathering information be vested in the agency which is also charged with responsibility for enforcement of the proposed legislation." See also: *Ibid.* pp. 8-9.

doubt as to where to file the reports or as to the places to be reported. If he has doubts, he is on notice from the Act itself to inquire of the Attorney General as to the boundaries of the reporting districts, or to file the information directly with the Attorney General as to all places of business. The latter procedure would, of course, satisfy the statute.

There is no language in Section 3 which presents any alternative courses of action, or which creates a situation in which the manufacturer or dealer would not know precisely what to do. The fact that statutory language is not composed entirely of self-defining terms, certainly does not invoke the extreme measure of nullifying it under the "void for vagueness doctrine," *United States* v. *Signore*, 115 F. 2d 669, 671 (C.A. 7); *United States* v. *Tishman*, 99 F. 2d 951 (C.A. 7), certiorari denied, 306 U. S. 636. That doctrine is invoked only in instances where patently ambiguous language is so unclear and equivocal as to render its enforcement a denial of due process of law. Cf. *United States* v. *Cardiff*, 344 U. S. 174; *United States* v. *Spector*, 343 U. S. 169, 171-172; *United States* v. *Petrillo*, 332 U. S. 1, 5-7. Plainly no such trap for the unwary exists in the instant language. The duty to report is clear, and whatever doubt there might be under the language as to the place to which to send the report on the boundaries of the "district" is dispelled by the regulation.

CONCLUSION

It is therefore respectfully submitted that the judgments of the district court should be reversed.

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SEPTEMBER, 1953.

APPENDIX A

The Act of January 2, 1951, 64 Stat. 1134 (15 U.S.C. (Supp. V), 1171-1177), provides in pertinent part as follows:

That as used in this Act—

(a) The term "gambling device" means—

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any machine or mechanical device designed and manufactured to operate by means of insertion of a coin, token, or similar object and designed and manufactured so that when operated it may deliver, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device.

* * * * *

Sec. 2. It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a possession of the United States from any place outside of such State, the District of Columbia,

or possession; *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section.

* * * * *

Sec. 3. Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every manufacturer of and dealer in gambling devices shall register with the Attorney General his name or trade name, the address of his principal place of business, and the addresses of his places of business in such district. On or before the last day of each month every manufacturer of and dealer in gambling devices shall file with the Attorney General an inventory and record of all sales and deliveries of gambling devices as of the close of the preceding calendar month for the place or places of business in the district. The monthly record of sales and deliveries of such gambling devices shall show the mark and number identifying each article together with the name and address of the buyer or consignee thereof and the name and address of the carrier. Duplicate bills or invoices, if complete in the foregoing respects, may be used in filing the record of sales and deliveries. For the purposes of this Act, every manufacturer or dealer shall mark and number

each gambling device so that it is individually identifiable. In cases of sale, delivery, or shipment of gambling devices in unassembled form, the manufacturer or dealer shall separately mark and number the components of each gambling device with a common mark and number as if it were an assembled gambling device. It shall be unlawful for any manufacturer or dealer to sell, deliver, or ship any gambling device which is not marked and numbered for identification as herein provided; and it shall be unlawful for any manufacturer or dealer to manufacture, recondition, repair, sell, deliver, or ship any gambling device without having registered as required by this section, or without filing monthly the required inventories and records of sales and deliveries.

Sec. 4. All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package.

Sec. 5. It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of title 18 of the United States Code or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18 of the United States Code.

Sec. 6. Whoever violates any of the provisions of sections 2, 3, 4, or 5 of this Act shall be fined not more than $5,000 or imprisoned not more than two years, or both.

Sec. 7. Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this Act shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable and not inconsistent with the provisions hereof: *Provided,* That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this Act by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

* * * * *

APPENDIX B

The regulations promulgated pursuant to 5 U.S.C. 22 by the Attorney General of the United States to implement the Act of January 2, 1951 are as follows (16 F.R. 3509, 28 C.F.R. (1952 Supp.) 3):

The following regulations are hereby prescribed for carrying out certain provisions of the act of January 2, 1951, entitled "An Act to prohibit transportation of gambling devices in interstate and foreign commerce" (Public Law 906, 81st Congress)

Sec. 3.1 *Registration and filing of reports by manufacturers of and dealers in gambling devices having places of business in Illinois.* Manufacturers of and dealers in gambling devices having places of business in the State of Illinois shall (a) register as required by section 3 of the act of January 2, 1951, entitled "An Act to prohibit transportation of gambling devices in interstate and foreign commerce" (Public Law 906, 81st Congress) with the Attorney General at the office of the United States Attorney, 219 South Clark Street, Chicago, Illinois, and (b) file the monthly reports required by that section with the Attorney General at the same place.

Sec. 3.2 *Registration and filing of reports by manufacturers of and dealers in gambling devices having places of business in States other than Illinois.* Manufacturers of and dealers in gambling devices having places of business in States other than the State of Illinois shall (a) register as required by section 3 of the said act of January 2, 1951, with the Attorney General

at the Department of Justice Building, Washington, D. C., and (b) file the monthly reports required by that section with the Attorney General at the same place. The term "States" as used in this section includes Alaska, Hawaii, Puerto Rico, the Virgin Islands, and Guam.

Sec. 3.3 *Seizures.* The Director, Associate Director, Assistant to the Director, Assistant Directors inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice are hereby authorized and designated to make seizures of gambling devices under the said act of January 2, 1951.

Sec. 3.4 *Custody and Forfeiture.* (a) All gambling devices seized pursuant to section 3.3 shall be held for, or turned over to, the United States marshal for the district in which the seizure is made. Other than the authority granted in section 3.3, United States marshals are hereby authorized and designated as the officers to perform the various duties with respect to seizures and forfeitures of gambling devices under the said act of January 2, 1951, as are imposed upon collectors of customs or any other persons with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws.

(b) The Attorney General will perform, with respect to the seizure and forfeiture of gambling devices under the said act of January 2, 1951, the functions and duties now performed by the Secretary of the Treasury in regard to the seizure and forfeiture of vessels,

vehicles, merchandise, and baggage under the customs laws.

This order shall become effective on the date of its publication in the Federal Register. The regulations prescribed by the order are necessary for carrying out certain provisions of the act of January 2, 1951, entitled "An Act to prohibit transportation of gambling devices in interstate and foreign commerce" (Public Law 906, 81st Congress), which became effective upon the date of its approval. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) with respect to notice of proposed rule making and delayed effective date is impracticable and contrary to the public interest in this instance because such compliance would unduly delay and impede the administration and enforcement of the said act.

(S.) J. HOWARD MCGRATH,
Attorney General.

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